IN THE

Supreme Court of the United States

October Term, 1961

No. 677

CHARLES C. MORGAN, individually, and as the representative of all other persons of a class similarly situated, WILLIS E. GARRETT, and THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH, also known as THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH, a corporation,

Petitioners,

vs.

PRESBYTERY OF THE EVERGLADES, a corporation, and CLARA KROME WILSON, for and on behalf of herself, and for and on behalf of all other persons similarly situated,

Respondents.

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

MARION E. SIBLEY, Esq.
605 Lincoln Road
Miami Beach, Florida
Attorney for Respondents

INDEX

	Page
Statement of the Case and Argument	2
Reasons for Denying Writ of Certiorari	6
Conclusion	7
Certificate of Service	7

TABLE OF CASES

	Page
Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94, 73 S. Ct. 143	5
Shepard v. Barkley, 247 U.S. 1, 38 S.Ct. 422	5
Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666	5

IN THE

Supreme Court of the United States

October Term, 1961

No. 612

CHARLES G. MORGAN, individually, and as the representative of all other persons of [illegible] similarly situated, ELLIS E. GARRETT, and THE MIAMI BEACH UNITED INDEPENDENT PRESBYTERIAN CHURCH, also known as THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH, a corporation,

Petitioners,

vs.

PRESBYTERY OF THE EVERGLADES, a corporation, and CLARA KROME WILSON, for and on behalf of herself, and for and on behalf of all other persons similarly situated,

Respondents.

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE AND ARGUMENT

ecclesiastical law

For this contumacious conduct on the part of the pastor and the ruling elders, each was tried in an ecclesiastical court, after complaint, citation, notice to be heard, and evidence taken, and the pastor was unfrocked and the ruling elders were removed from office and stripped of their powers by appropriate order and decree of the ecclesiastical court.

The ruling elders and the pastor continued to hold possession of the church edifice, adopted a new creed, and contended that they had created a church body authorized to use the church edifice.

The Presbytery demanded possession of the church edifice for the purpose of utilizing it for communicant members of the Presbyterian Church in the United States in order that the church property should not be diverted from its trust purposes, namely, as a place of worship for communicant members of the Presbyterian Church in the United States and such other persons as might wish to attend and worship according to the Presbyterian tenets. Their request was denied and suit was brought by the Presbytery, the authority authorized under the Book of the Church Order to institute such legal proceedings, as the controlling judicatory. It was joined in the suit by a non-dissenting member of the church suing on behalf of herself, and all other members similarly situated.

During the course of the litigation it developed that the presiding pastor led approximately two-thirds of the congregants in a second secession and moved to another church edifice. The non-seceding congregants continued in the possession of the edifice of the Miami Beach First Presbyterian Church.

The Florida courts determined that the church property was charged with a trust to be utilized by members of the Presbyterian Church in the United States and required the church property to be delivered to the Presbytery in order that it might be utilized for the trust purposes.

The Florida courts adopted the rule enunciated by the Supreme Court of the United States in **Watson v. Jones**, 13 Wall. 679, 20 L. Ed. 666; **Shepard v. Barkley**, 247 U.S. 1, 38 S.Ct. 422. See also, **Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church**, 344 U.S. 94, 73 S.Ct. 143.

In **Watson v. Jones**, supra, the Supreme Court of the United States held:

> "In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

. . . .

"But we need pursue this subject no further than to say that we have found the case before the [illegible] by [illegible] the appellants in the case pre-

...ented to its have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, ignore its action and refuse to abide by its judgments. They have first created themselves into a new organization, and have since joined themselves to another, totally different, if not hostile to the one to which they belonged when the difficulties first began. Under any of the decisions which we have examined, the appellants, in their present position, have no right to the property, or to the use of it, which is the subject of this suit.

REASONS FOR DENYING WRIT OF CERTIORARI

I. There is no federal question involved in this application for a writ of certiorari.

II. No order, decree or judgment of the Florida courts in this cause has been rendered which deprives any person from freely worshipping in accordance with the dictates of his or her conscience.

The church edifice was charged with a trust which required it to be utilized for worship for members of the Presbyterian Church in the United States and in accordance with the provisions of the ecclesiastical law of that church denomination. Contributions toward the construction of the church were made with the knowledge that the property constructed by the use of such contributions would be bound by the trust purpose.

CONCLUSION

We respectfully suggest that the petition for writ of certiorari is wholly without merit.

Respectfully submitted,

MARION E. SIBLEY
1000 Lincoln Road
Miami Beach, Florida
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief in Reply to Petition for Writ of Certiorari has been personally delivered to the office of Robert A. Peterson, 1000 Lincoln Road, Miami Beach, Florida, attorney for petitioners herein, this 17th day of February, 1962.

MARION E. SIBLEY